

RETURN DATE: FEBRUARY 21, 2023

SUPERIOR COURT

OSPREY FUNDS, LLC

J.D. OF FAIRFIELD

v.

AT BRIDGEPORT

GRAYSCALE INVESTMENTS, LLC and
DELAWARE TRUST COMPANY, f/k/a
CSC Trust Company of Delaware, as the
Trustee of GRAYSCALE BITCOIN
TRUST

JANUARY 30, 2023

COMPLAINT

Plaintiff Osprey Funds, LLC (“Osprey”), as and for its Complaint against Defendants Grayscale Investments, LLC and Delaware Trust Company, f/k/a CSC Trust Company, as the Trustee of Grayscale Bitcoin Trust (“Grayscale Bitcoin Trust”), hereby states and alleges as follows:

Preliminary Statement

1. Grayscale Investments, LLC and Grayscale Bitcoin Trust (collectively “Grayscale”) have engaged in unfair and deceptive acts and unfair competition in the asset management industry and market for certain asset management services.

2. Specifically, Grayscale advertises and promotes its services by various media, including Twitter, talk shows, and press releases. Since no later than in or about late 2020, through the present, Grayscale has made materially false and misleading statements in its advertising and promotion to the effect and in substance that turning its Bitcoin asset management services into access to a Bitcoin ETF was a foregone conclusion, when it knew that access was never likely to happen. Grayscale also regularly promotes its services as

“transparent,” free of certain risks, “secure,” and supported by a “proven track record,” all of which are false and deceptive.

3. Osprey is the only other asset manager providing services in the marketplace of opportunities for trust-based products offering ticker-based exposure to Bitcoin (the “OTC-Traded Bitcoin Trust asset management market”). Only because of its false and misleading advertising and promotion has Grayscale been able to maintain to date approximately 99.5% market share in a two-participant market despite charging more than four times the asset management fee that Osprey charges for its services, and despite Osprey’s entry to the market more than two years ago. As a result of its unfair trade practices, Grayscale’s assets under management (currently approximately \$14.6 billion) are several billion dollars higher than they should be in the two-participant market for these asset management services. Osprey has lost management fees and profits to Grayscale as a result of its unfair trade practices. Grayscale’s profits since Osprey’s entry into the two-participant market for these asset management services provides one proxy for measurable losses that the false and misleading advertising and promotion has caused. The enterprise value loss to Osprey due to Grayscale’s misconduct also is substantial.

Parties

4. Osprey is a Delaware limited liability corporation, with a principal place of business in Fairfield, Connecticut.

5. Defendant Grayscale Investments, LLC is a Delaware limited liability corporation with a principal place of business in Stamford, Connecticut.

6. Defendant Bitcoin Trust is a Delaware statutory trust with a principal place of business in Stamford, Connecticut.

Jurisdiction and Venue

7. Jurisdiction is proper over this dispute under General Statutes Section 52-1.

8. Venue is appropriate in this Court under Section 51-345(3) because all parties are residents of Connecticut and at least one resides in this judicial district.

Background

9. Osprey provides asset management services, acting as a sponsor of, and running the day-to-day operations of, various trusts that offer investment exposure to digital assets, including ticker-based exposure to various digital assets.

10. Included among the trusts that Osprey sponsors is the Osprey Bitcoin Trust. The Osprey Bitcoin Trust holds Bitcoin and issues units of beneficial interest, which may trade publicly through an over-the-counter bulletin board.

11. Osprey is paid an asset management fee for the asset management services it provides in connection with the Osprey Bitcoin Trust.

12. Grayscale Investments, LLC competes with Osprey as a sponsor of various trusts and, on information and belief, is responsible for the day-to-day management of the trusts it sponsors, including advertising and promotional activities, by which it seeks to attract clients for its asset management services related to the trusts that it sponsors.

13. Included among the trusts that Grayscale Investments, LLC sponsors is Grayscale Bitcoin Trust, which holds Bitcoin and issues units of beneficial interest to investors interested in investing in Bitcoin.

14. Osprey and Grayscale are competitors, and are the only two companies in the United States currently offering services to customers that provide access to the OTC-traded Bitcoin Trust asset management market.

15. Grayscale has engaged in various acts of unfair and deceptive trade practices that have harmed Osprey, including by illicitly attracting clients for its asset management services, thus directly reducing the management fees payable to Osprey for its services in a two-participant market.

Unfair Competition

16. Through various unfair and deceptive devices, Grayscale has promoted itself and its sponsored trusts, including the Grayscale Bitcoin Trust, by suggesting that their services provide access to investment opportunities that are safer and less susceptible to risk than they actually are. Grayscale promotes its services both directly to customers and to investment advisors.

17. Since no later than in or about late 2020, Grayscale has regularly advertised and promoted its services, in connection with the OTC-Traded Bitcoin Trust asset management market, in a materially false and misleading way. For example, Grayscale has advertised and promoted its services in a false and misleading way as providing access to the Grayscale Bitcoin Trust with a definitive conversion of the Grayscale Bitcoin Fund to an exchange traded fund (the “ETF Conversion Scheme”). Grayscale also referred to the ETF Conversion Scheme as “likely,” despite knowing that such a description was false, as the SEC had consistently rejected the possibility of such conversion for a Bitcoin commodity fund since in or before late 2020.

18. As early as on or about July 7, 2017, representatives of the SEC had met and communicated with representatives of Grayscale and indicated the SEC’s distrust of Grayscale’s plans.

19. Nevertheless, Grayscale subsequently advertised and promoted the ETF Conversion Scheme through press releases; television appearances of Grayscale’s executives,

including Michael Sonnenshein; Twitter; and email. One such television appearance occurred on CNBC on January 14, 2021.

20. Grayscale launched campaign after campaign to convince participants in the market, including through their investment advisors, to engage Grayscale's asset management services by telling them that a conversion to an ETF was inevitable, and thus Grayscale's services would provide the only avenue offering the benefits of such asset management services with access to an ETF structure. Grayscale knew that this message was false.

21. In furtherance of their marketing efforts, including efforts to attract interest from investment advisors, on or about January 14, 2021, Grayscale advertised and promoted nationally, on television and various social media, its Grayscale Bitcoin Trust as risk-free for investment professionals who make investment decisions or recommendations to their clients. In that regard, defendants stated specifically and in part: "There's no longer professional risk of investing in the digital currency asset class...." They made this representation despite knowing that there was substantial risk for those investment professionals and their clients.

22. Contrary to this false and misleading advertising and promotion, Grayscale's services related to the Grayscale Bitcoin Trust were highly risky at the time, in part due to the drastically higher fees that the Grayscale Bitcoin Trust pays to Grayscale Investments, LLC and its affiliates, and various conflicts of interest and legal exposure that plagued, and continue to plague, Grayscale's business model.

23. Similarly, Grayscale has engaged in a lengthy and ongoing advertising and promotion campaign that falsely and misleadingly promoted and continue to promote Grayscale Investments, LLC's services that access sponsored trusts, including the Grayscale Bitcoin Trust, as "secure," "transparent," and having a "proven track record." These statements falsely and

misleadingly portrayed Grayscale's asset management services and concealed troubling features and history of Grayscale.

24. For example, among the reasons that Grayscale Bitcoin Trust investors pay such high management fees – which exceed four times those that investors in Osprey Bitcoin Trust pay – is that Grayscale Investments, LLC has caused the Grayscale Bitcoin Trust to engage various, over-priced affiliates of Grayscale Investments, LLC, with materially inadequate disclosures about those relationships.

25. The various relationships with affiliates of Grayscale Investments, LLC, which have resulted in excessive fees, directly and through its affiliates, and give rise to conflicts of interest, are anything but “transparent” and free of “professional risk.” These affiliates have been used, for example, as broker-dealers, distributors, and marketers of the trust's shares; as custodian of its Bitcoin; and as both borrowers and lenders of Bitcoin, which is then used to inflate the Grayscale Bitcoin Trust to generate higher fees for Grayscale Investments, LLC. These affiliates all lack independence from Grayscale Investments, LLC, the trust's sponsor, and operate pursuant to arrangements that could not have been created at arm's length.

26. In addition, far from having a “proven track record,” Grayscale's use of affiliates for related-party transactions and manipulative practices has previously resulted in the Grayscale Bitcoin Trust (then known as Bitcoin Investment Trust) being disciplined by the U.S. Securities and Exchange Commission. The SEC charged Grayscale Bitcoin Trust and another affiliate of Grayscale Investments, LLC with violating anti-market-manipulation regulations, including as a result of the way a Grayscale affiliate was used to illicitly purchase units in the Grayscale Bitcoin Trust while also offering trust units to the public. The SEC ordered Grayscale Bitcoin Trust and the affiliate to cease and desist such conduct.

27. Even more recently, another Grayscale affiliate has been the subject of charges by the SEC for its illicit practices, including practices that Grayscale has used to inflate the size of the Grayscale Bitcoin Trust and attract customers to Grayscale's asset management services. Specifically, the SEC has accused a now-bankrupt Grayscale affiliate known as Genesis Global Capital, LLC of engaging in an illegal scheme by which it borrowed Bitcoin, pooled that Bitcoin, and then re-lent it to others for a fee. Some of the borrowed Bitcoin from this illegal scheme was then used to promote the acquisition of units in the Grayscale Bitcoin Trust, driving customers toward defendants rather than toward Osprey's offerings, and inflating the size of the Grayscale trust and of Grayscale Investments, LLC's asset management fees.

28. In this way, Grayscale and its affiliates used a circular transaction, by which one Grayscale affiliate (i.e. Genesis Global Capital) would borrow Bitcoin, and re-lend that Bitcoin for a fee to customers in the OTC-Traded Bitcoin Trust asset management market, who would then contribute that borrowed Bitcoin to another Grayscale affiliate (i.e. Grayscale Bitcoin Trust), inflating the size of the trust and generating higher fees for yet another Grayscale affiliate (i.e. Grayscale Investments, LLC).

29. Also inconsistent with its advertising and promotional activities described above, the defendants have a history of litigation with their own customers who have sued them, invoking the excessively poor performance of the Grayscale Bitcoin Trust, including the steep discount at which its shares traded as compared to the net asst value of its Bitcoin holdings, the enormous fees that Grayscale Investments, LLC and its affiliates charged, and the conflicts of interest that the use of various Grayscale Investments, LLC's affiliates created.

30. Such customers have accused the defendants of deceptively suggesting to customers that the defendants are not allowed to redeem customer units in the trust, when they

are in fact not prohibited from doing so, as a way to increase the number of shares, and thus the fees payable to Grayscale Investments, LLC for its asset management services. Such allegations are a direct attack on the transparency and “track record” of the defendants.

31. Despite this history of regulatory and litigation problems, the defendants continue to promote themselves as free of “professional risk,” “secure,” “transparent,” and as having a “proven track record,” without disclosing in conjunction with those claims their problematic use of affiliates to drive up fees, their regulatory transgressions, their conflicted self-dealings with their affiliates, and the excessive discount at which units in their asset management trust trade.

32. The unfair and deceptive manner in which Grayscale has attracted customers to its asset management services, including the manner in which Grayscale advertises and promotes its asset management services, to the detriment of Osprey, their sole market competitor, has harmed Osprey directly and foreseeably. Unlike Grayscale, Osprey markets and promotes its asset management services in a fair and accurate manner.

COUNT I
VIOLATION OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT
(C.G.S. § 42-110a, *et seq.*)

1-32. Osprey re-alleges and incorporates the allegations of paragraphs 1-32 as paragraphs 1-32 of Count I.

33. While engaged in commerce, Grayscale has engaged in unfair and deceptive acts, as set forth above.

34. As a proximate result of the defendants’ unfair and deceptive trade practices, Osprey has suffered losses, including diminished asset management fees, profits, and enterprise value.

35. A copy of this complaint is being mailed to the Connecticut Office of the Attorney General and the Commissioner of Consumer Protection, pursuant to General Statutes § 42-110g(c).

36. In addition, because of the nature of Grayscale's unfair competition, including the specific materially false and misleading advertising and promotions set forth above, not all potential damages can be ascertained with certainty, making remedies in law inadequate in themselves and posing a risk of irreparable harm to Osprey, which has a likelihood of success on the merits of its claims.

37. In addition to an award of damages, the balance of hardships favors an award of preliminary and permanent injunctive relief against Grayscale and in favor of Osprey.

38. In addition to an award of damages, Osprey is entitled to preliminary and permanent injunctive relief requiring Grayscale to cease and desist from its unfair and deceptive practices, including its false and misleading advertising and promotions.

PRAYER FOR RELIEF

WHEREFORE, Osprey Funds, LLC respectfully requests entry of judgment in its favor and against the defendants, containing the following relief:

- A. Compensatory damages in an amount to be proven at trial;
- B. Disgorgement of the defendants' proceeds resulting from its unfair and deceptive trade practices;
- C. A preliminary and permanent order enjoining defendants from engaging in the unfair and deceptive practices discussed herein, including but not limited to false and misleading advertising and promotions;
- D. Punitive damages, pursuant to C.G.S. § 42-110g(a);
- E. Costs and attorneys' fees, pursuant to C.G.S. § 42-110g(d)
- F. Pre- and post-judgment interest as permitted by applicable law;
- G. Any other relief that the Court deems just and proper.

OSPREY FUNDS, LLC

By



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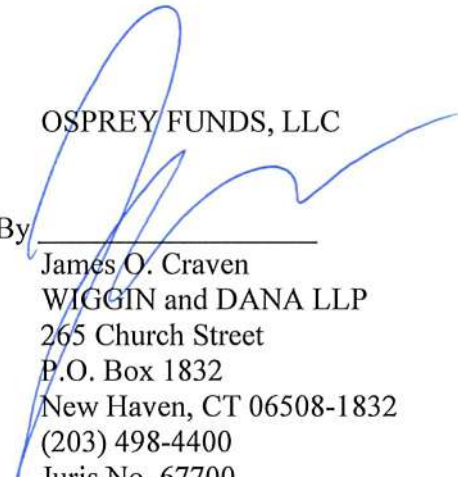
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CSC Trust Company of Delaware, as the	:	
Trustee of GRAYSCALE BITCOIN	:	
TRUST	:	

STATEMENT OF AMOUNT IN DEMAND

The amount in demand is greater than Fifteen Thousand and 00/100 (\$15,000.00)

Dollars, exclusive of interest and costs.

OSPREY FUNDS, LLC

By  _____

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